

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **July 8, 2003**

AGENDA ITEM NO.: **2**

CONSENT: **X**

REGULAR:

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Approval of Revisions To The Plan Document For The City's Self-Insurance Program**

RECOMMENDATION:

Approve the attached resolution making various changes in the Plan Document for the City's Self-Insurance Program.

SUMMARY:

On December 20, 1985 City Council approved a Self-Insurance Program to cover the City's liability claims. At the same time City Council also approved a Plan Document for the Self-Insurance Program. The Plan Document explains the Self-Insurance Program and sets forth the general terms and conditions for the administration of the program. The Plan Document has not undergone a comprehensive review or revision since its adoption. As a result of changes in the laws, new decisions by the courts, changes in the insurance industry, etc. the City's Plan Document needs to be revised. The City Attorney's Office, the Risk Management Office and the City Manager's Office worked together to review and make appropriate revisions to the Plan Document.

PRIOR ACTION(S):

Adoption of the City's Self-Insurance Program and Plan Document on December 20, 1985.

FISCAL IMPACT: None

CONTACT(S): Walter Erwin (847-1310 ext. 235)

ATTACHMENT(S): Plan Document; Resolution

REVIEWED BY: lkp

RESOLUTION

BE IT RESOLVED that the Plan Document for the City's Self-Insurance Program as revised effective July 8, 2003, is hereby adopted.

Adopted:

Certified:

Clerk of Council

123L

CITY OF LYNCHBURG SELF-INSURANCE PROGRAM
PLAN DOCUMENT

Originally Adopted: December 20, 1985 with an effective date of January 1, 1986

Revised: July 8, 2003

CITY OF LYNCHBURG SELF-INSURANCE PROGRAM PLAN DOCUMENT

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CITY OF LYNCHBURG SELF-INSURANCE PROGRAM PLAN DOCUMENT

PURPOSE: The provisions of the Self-Insurance Program (the "Program") are intended to provide protection for the City and public officials and employees against claims and liability arising from the performance of official duties. All coverage and costs of defense that are provided hereunder are from public funds, provided as a part of the City's Self-Insurance Program. This Plan Document addresses the administration of the City's Self-Insurance Program, sets forth the types of claims that are covered under the Plan, the limitations and exclusions from coverage, outlines the defense of claims and lawsuits and address the responsibilities of individuals seeking coverage under the Self-Insurance Plan, all as more particularly set forth below.

SECTION 1: GENERAL PROVISIONS

1.1 Interpretation.

The various provisions of this Plan Document shall be interpreted together, to explain the overall intent of the Self-Insurance Plan, and no individual provision shall be interpreted or construed independently of overall context. The masculine shall include the feminine, and vice versa, and the singular shall include the plural, and vice versa, unless the context clearly indicates otherwise. If any provision hereof is ever determined to be invalid or unenforceable for any reason, it shall be deemed severable; and the remaining provisions shall be interpreted or construed so as to continue to effect the overall intent of the Self-Insurance Plan.

1.2 Program Year

The term "program year" wherever used herein shall mean the period beginning July 1, 1986 and each consecutive fiscal year thereafter.

1.3 Self-Insurance Fund

The City will establish a Self-Insurance Fund for the sole purpose of funding the Self-Insurance Program.

1.3 Purchase of Commercial Insurance

The provisions of the Self-Insurance Program notwithstanding, commercial insurance can and should be purchased, when it is financially feasible to do so, to cover as many of the Self-Insurance Fund's exposures as possible.

1.5 Self-Insured Limits

Except as to uninsured/underinsured motorist claims and except as otherwise provided by City Council, the Self-Insurance Program will provide protection up to \$500,000.00 per occurrence combined single limit (bodily injury and property damage) for those coverage's

listed. The City's maximum aggregate liability for any and all claims or suits shall be \$500,000.00 per occurrence, regardless of the number of claims or claimants arising out of the same occurrence, and regardless of the number of persons allegedly responsible for such occurrence, and regardless of the number of acts or omissions that lead to injury of anyone or all of the claimants; provided, however, that the City shall provide a higher limit of liability with respect to such claims if the City is required to do so by statute, but then only to the extent required by statute.

1.6 Self-Insurance Program Deductible

In an effort to increase loss control and safety awareness within the various City departments, the Self-Insurance Program may include deductible provisions. The deductibles will apply when the City becomes liable for a bodily injury or property damage claim resulting from the negligent or careless actions of a covered individual. The department in which the individual causing the bodily injury or property damage is employed will incur the deductible. The City Manager is authorized to approve the necessary procedures to implement a deductible program including the deductible amounts.

1.7 Definition of City

In respect to the protection afforded by this Self-Insurance Program, the unqualified word "City" includes, but is not limited to, the following: .

A. The City of Lynchburg, a municipal corporation of the Commonwealth of Virginia, including City Council and all of the City's appointed officials, employees and volunteers. For the purposes of this Plan, the word "volunteer shall mean any person who has volunteered his or her services to the City and whose services have been accepted by and are performed under the direction and control of a City department and whose volunteer work has been approved by the Risk Manager.

B. Boards, commissions, or authorities, all the members of which are appointed by the City Council, except the Lynchburg Redevelopment & Housing Authority, the Lynchburg School Board and the Greater Lynchburg Transit Company.

C. The automobile liability coverage provided under Section 3, Item 3.3 of this Plan Document applies only to the City and its employees. Such coverage does not apply:

1. to any person or organization, or to any agent or employee thereof, operating an automobile sales agency, testing agency, repair shop, service station, storage garage or public parking place, with respect to any accident arising out of the operation thereof.
2. with respect to any hired automobile, to the owner or a lessee thereof, other than the City, nor to any agent or employee of such owner or lessee.

1.8 Claims Adjustment

A. The City will provide claims administration services through the Risk Management Office or through the services of an independent third party claims administration organization.

B. Claims will, at all times, be adjusted in compliance with this Self-Insurance Program. The Risk Management Office and the City Attorney's Office are authorized to develop Claims Reporting Procedures for the adjustment of claims.

C. The City will provide loss control through the Risk Management Office. The City may also supplement the loss prevention services provided by its staff with the services of an independent loss prevention organization. The Risk Management Office will assist the various City departments with the development of employee safety programs.

1.9 Defense of Claims

A. If any claims for money or any lawsuits are threatened or filed against the City or any member of City Council, any appointed official, employee, or volunteer as defined in Section 1.7, arising from actions or omissions made in good faith in the performance of official duties on behalf of the City of Lynchburg, the City Attorney's Office, subject to the limitations, terms, definitions, exclusions, and provisions set forth in this Plan document, shall represent or shall contract with outside legal counsel to represent the City with respect to such claim or cause of action.

B. The City Attorney, in such manner as he may deem proper, is hereby authorized to compromise and settle, in the amount of \$20,000 or less, any litigation or claim involving the interest of the City or brought against the City, arising from the conduct of any covered individual in the discharge of his duties. Any settlement, cost or expense of a claim or judgment awarded against the City shall be taken from the City's Self-Insurance Fund.

C. In the event of a real or potential conflict of interest involving the City Attorney's representation of the City and any covered individuals on any lawsuit or combination of claims or lawsuits; and in the event that any such conflict of interest or other ethical consideration might impede effective representation and legal defense by the City Attorney, the City Attorney is authorized to retain outside or additional counsel, at his sole discretion, to represent any such individuals who shall in his opinion require such counsel.

D. If, because of conflict of interest or for any other reason, the City Attorney determines it necessary or advisable to retain outside counsel to defend a covered individual, the selection of said counsel shall be made solely by the City Attorney and not by the covered individual. The covered individual shall be under a strict and full duty of cooperation with defense counsel, regardless of whether that counsel is a member of the City Attorney's Office or outside counsel.

E. The City may, at the sole discretion of the City Attorney and the City Manager, deny to a covered individual the coverage and/or defense afforded under this Self-Insurance Plan, or limit that coverage and/or defense, where the City Attorney and the City Manager determine that it is in the City's best interest to do so. No action shall lie against the City, its officials and employees, by or on behalf of any covered individual or any other third party to compel or enforce the protection provided by this Self-Insurance Plan, and there shall be no third party beneficiary of this Plan.

1.10 Other Protection/Secondary Coverage

- A. The protection provided under this Self-Insurance Program, shall be in excess of and secondary behind any other valid and collectible insurance, self-insurance or protection or indemnity of any kind available to the City or a covered individual, either as an insured under another policy or otherwise. As regards any protection, defense or indemnity provided under the provisions of the Plan Document, insofar as required or permitted by law, it shall only be excess over any other valid and collectible insurance, self-insurance or protection.
- B. If, at the time of loss, there is insurance available to the City other than that provided by this Program, which covers such loss or which would have covered such loss except for the existence of this Program, the Self-Insurance Program shall not be liable for any amount other than the excess over any amount which is collectible under such other insurance applicable to a loss hereunder.

1.11 No Reduction by Loss

Notwithstanding any provision in this Program to the contrary, the amount of coverage provided hereunder with respect to any one occurrence shall not be reduced by the payment of any loss under the Program resulting from any other occurrence.

1.12 Actuarial Review

Periodically, the City may arrange for the Self-Insurance Fund have an actuarial or claims reserve review by an outside party. This review will be used to keep the City Administration apprised of the financial condition of the Fund and to ensure compliance with applicable Federal and State requirements.

SECTION 2: PROPERTY COVERAGES

2.1 Limits of Property Coverage and Advances from Self-Insurance Fund

Damage to and losses of City owned real and personal property are covered through the purchase of commercial insurance and are not reimbursed from the City's Self-Insurance Fund. The City's Risk Manager may advance City departments monies from the Self-Insurance Fund for property losses if the City believes it can reasonably expect to recover such sums from a third party through subrogation or some other means. If the City is unable to recover a property loss from a third party, the City department that received an advance from the Self-Insurance Fund must return all monies that were advanced from the Fund prior to the end of the fiscal year in which the monies were advanced.

SECTION 3: LIABILITY COVERAGES

3.1 Comprehensive General Liability (including Law Enforcement Liability and Completed Operations)

The Self-Insurance Program shall, subject to the limitations, terms and conditions contained herein, indemnify the City for all sums which the City shall be obligated to pay by reason of

the liability imposed upon the City by law or assumed by the City under a settlement agreement, for damages direct or consequential, and expenses, all as more fully defined by the term "ultimate net loss", on account of personal injuries, including death, at any time resulting therefrom, suffered or alleged to have been suffered by any person or persons (excepting employees of the City injured in the course of their employment); and/or damages to or destruction of property or the loss of use thereof.

3.2 Liability for Underground Storage Tanks

The Self-Insurance Program shall, subject to the limitations, terms and conditions contained herein, indemnify the City for taking corrective action and/or compensating third parties for bodily injury and property damage arising from the sudden or non-sudden accidental release of petroleum based substances from the underground storage tanks owned and/or operated by the City. Such coverage shall be secondary to any coverage provided by any other insurance policy or plan, including the coverage provided by the Virginia Underground Storage Tank Fund, and is further subject to the self-insured limits of Section 1.5 of this Plan.

3.3 Automobile Liability

The Self-Insurance Program shall, subject to the limitations, terms and conditions contained herein, indemnify the City for all sums which the City shall be obligated to pay by reason of the liability imposed upon the City by law or assumed by the City under a settlement agreement, for damages direct or consequential, and expenses, all as more fully defined by the term "ultimate net loss", on account of personal injury, including death, at any time resulting therefrom, suffered or alleged to have suffered by any person or persons (excepting employees of the City injured in the course of their employment); and/or damage to or destruction of property or the loss of use thereof, arising out of the ownership, maintenance or use of any automobile.

3.4 Automobile Medical Payment Coverage

The Self-Insurance Program will not participate in automobile medical payments coverage.

3.5 Uninsured/Underinsured Motorist Coverage

The Self-Insurance Program shall pay all sums the City is legally entitled to recover as damages from the owner of any uninsured or underinsured motor vehicle resulting from bodily injury to or death of any person or injury to or destruction of property caused by an occurrence subject to a maximum limit with respect to each motor vehicle of either \$25,000 because of bodily injury to or death of one person in anyone accident and, subject to the limit of one person, to a limit of \$50,000 because of bodily injury or death of two or more persons in anyone accident, and to a limit of \$20,000 because of injury to or destruction of property of others in any one accident or the minimum amount required to be provided by self-insurers pursuant to Virginia Code Sections 38.2-2226 and 46.2-368 or any successor statutes. The owner's or vehicle operator's liability for these damages must have resulted from the ownership, operation or use of the uninsured/underinsured motor vehicle.

3.6 Incidental Medical Malpractice

The Self-Insured Program shall, subject to the limitations, terms and conditions contained

herein, pay on behalf of the City all sums which the City shall be obligated to pay by reason of the liability imposed upon the City by law for damages arising out of incidental professional medical services rendered or which should have been rendered to any person or persons by any duly qualified medical practitioner, or nurse, or technician employed by or acting on behalf of the City provided such liability is based solely upon error, negligence, omission or mistake committed during the period of this program.

3.7 Public Officials Liability and Errors & Omissions Liability

The Self-Insurance Program shall, subject to the limitations, terms and conditions contained herein, indemnify the City against any claim or claims for breach of duty which may be made against the City by reason of any negligent act, error or omission, whenever or wherever committed or alleged to have been committed, on the part of the City or any person who has been, is now, or may hereafter be employed by the City during the existence of the Self-Insurance Program.

3.8 Exclusions

A. Claims that are excluded from coverage

The coverage provided by the Self-Insurance Plan does not apply to:

1. Criminal charges, even if arising from or related to the performance of duties, unless a defense and coverage are requested in writing and the City Attorney and the City Manager, in their sole discretion, the exercise of which such discretion shall not be reviewable or subject to challenge, then make a fact-based determination that the criminal charges and/or penalties sought to be imposed do not entail criminal intent by the covered individual and are for merely technical, unintentional and non-willful violations of statutes, laws, ordinances or regulations which impose criminal liability. The City Attorney and the City Manager may condition providing the costs of defense on a favorable final determination of the criminal charges, such as by a finding of not guilty, a dismissal, or a nol prosee.
2. Damage or destruction of property owned by the City.
3. Any case or claim arising from personal conduct not involving the performance of official duties by a covered individual, even if the conduct occurred during working hours and/or in the workplace.
4. Any case or claim arising from misconduct of a covered individual that shows a lack of good faith or that is so extreme, and so inconsistent with established policies, practices, or procedures that the misconduct rises to the level of being willful, wanton, or for the purpose of intentionally causing harm, deceiving, or defrauding, even if the conduct occurred during the performance of official duties, or acts which are willful, malicious, wanton or committed outside the scope of employment or authority of the person so acting.
5. Acts performed by constitutional officers and their employees.

B. Types of Damages Which Are Covered and Which Are Excluded

1. The City will provide coverage as set forth in this Plan Document, for compensatory

damages.

2. The City will not provide coverage for criminal fines or for punitive damages, unless the City Attorney and the Manager, in their sole discretion, the exercise of which such discretion shall not be reviewable or subject to challenge, make a fact-based determination that the conduct which gave rise to the criminal fines or punitive damages occurred in good faith and in the reasonable performance of official duty and comprised nothing more severe than simple negligence, inadvertence, or error of judgment. The burden shall be on the individual seeking such coverage to convince the City Attorney and City Manager that such coverage should be provided.

3.9 Additional Exclusions

A. Coverage under this Self-Insurance Plan is provided for the purpose of protecting the City and covered individual from claims made by third parties. Other than for uninsured/underinsured motorist claims, there is no coverage for any damage or loss experienced by any covered individual for personal or bodily injury, injury to reputation, property damage or loss, or any other type of loss whatsoever, even if the damage or loss occurs during the performance of official duties.

B. Neither a defense nor protection will be provided for claims that are covered or protected under another program, by another self-insurer, or by other insurance, including without being limited to, Worker's Compensation, auto insurance, Unemployment Compensation, aircraft and watercraft insurance, etc.

3.10 Conditions of Coverage

A. Duty to Report. If an incident occurs that may reasonably give rise to a claim referred to in this Plan Document, the employee or official involved shall, as soon as practically possible after the incident, report the incident, pursuant to the City's claims reporting procedures, to Risk Management Office. The report shall include the particulars of the incident, such as time, place, circumstances, and names and addresses of any injured person(s) and witnesses, to the extent reasonably available.

B. Duty to Provide Notice of Claims and Lawsuits. If a written claim is made or a Bill of Complaint, Motion for Judgment, or any other court paper is served on, mailed to, or otherwise provided to or received by any individual covered under this Self-Insurance Plan, such individual shall immediately deliver the claim or court paper to the City Attorney and shall request that coverage and a defense be provided.

C. Duty of Cooperation. The covered individual shall fully cooperate and assist in the investigation and defense of any claim or lawsuit, including being truthful and making full disclosure to all representatives of the City, cooperating fully in the conduct of litigation, providing any requested authorization for settlements, and cooperating in enforcing any right of contribution or indemnity against any insurer, person, or organization who or which may be liable to the covered individual and/or City. The covered individual shall not do anything to prejudice the rights or financial interests of the City; and to that end the covered individual shall not make any admission, sign any document prejudicial to the City's financial interests, or voluntarily make any payment (other than on his own behalf), communicate directly with the

legal representative of an adverse party, or assume any obligation or incur any expense other than first aid to others at the time of the injury. The covered individual shall cooperate fully with the City's representatives in the investigation of any claim, securing of evidence, obtaining attendance of witnesses, attendance at hearings, trials, interviews, etc., and in such other matters as the City shall direct. No loss of pay will be charged against any covered individual because of such cooperation. The covered individual will agree to any settlement negotiated by the City, which does not impose personal liability on the covered individual.

D. Subrogation. In the event of any payment made under this procedure, the City shall be subrogated to all of a covered individual's rights of recovery against any insurer, person or organization, and a covered individual shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. A covered individual shall do nothing to prejudice such rights. Whether or not such act would prejudice any subrogation rights, no person who is maintaining or will maintain an uninsured or underinsured motorist claim against the City may settle, compromise, stipulate to damage with or permit any confession of judgment by any other person, entity or insurer with respect to the same accident, occurrence or injury.

E. Consequence of Failure to Meet Duties. If a covered individual fails to fully, properly, and timely comply with any of the duties imposed by Sections A., B., C. or D., above, then the City may, in its sole discretion, summarily terminate or limit coverage and may cease providing a defense. The City shall promptly notify a covered individual in writing if coverage and/or a defense is so terminated or limited, and the reason for doing so.

3.11 Coverage and Defense and Reservation of Rights

The City may, in its sole discretion, make such investigation and settlement it deems proper before determining whether or not to provide coverage and a defense, and it may initially defend and reserve its rights concerning continued defense and coverage until a later time, pending a more complete factual understanding. If the City later determines that a defense and coverage are not authorized or required hereunder, then it shall not be obligated to continue providing coverage, and its obligation to provide a defense shall be governed solely by the Canons of Professional Responsibility of the Virginia State Bar.

3.12 Cross Liability

In the event of claims being made by reason of personal injuries and/or property damage suffered by any employee of the City for which another City employee is or may be liable, then this Program shall cover such employee against whom a claim is made or may be made.

13.13 Definitions

A. Personal Injuries. The term "personal injuries," whenever used herein, shall include; but is not limited to: bodily injury, mental injury, mental anguish, shock, sickness, disease, disability, false arrest, false imprisonment, false eviction, detention, malicious prosecution, discrimination, humiliation, invasion of right of privacy, libel, slander or defamation of character, piracy or any infringement of copyright or of property, erroneous service of civil papers, violation of civil rights, assaults and battery, and disparagement of property.

B. Property Damage. The term "property damage," wherever used herein, shall mean damage to or destruction of or loss of use of property, excluding, however, damage to property owned by the City, but including damage to property of others in the care, custody or control of the City or property which is purchased by the City under a contract which provides that the title remain with the sellers until payments have been completed, the liability of the Self-Insurance Program being limited to the amount of payments outstanding.

D. Incident or Occurrence. The term "incident or "occurrence," wherever used herein, shall mean an accident or any happening or event or a continuous or repeated exposure to conditions which unexpectedly and unintentionally result in personal injury or damage to property. All such exposures to substantially the same conditions existing at or emanating from one location shall be deemed one occurrence.

E. Ultimate Net Loss. The term "ultimate net loss," shall mean the total sum which the City becomes obligated to pay by reason of claims covered under Section 3 of this Program, either through adjudication or compromise, after making proper deductions for all recoveries and salvages and shall also include, but not limited to, hospital, medical and funeral charges and all sums paid as salaries, wages, compensation, fees, charges and all costs, premiums on attachment or appeal bonds, interest, expenses for doctors, lawyers, nurses and investigators and other persons, and for litigation, settlement, adjustment and investigation of claims and suits which are paid as a consequence of any occurrence covered hereunder, excluding only the salaries of the City's permanent employees.

F. Automobile. The term "automobile" shall mean any motor vehicle, trailer or semi-trailer, including its equipment and any other equipment permanently attached thereto. The word "trailer" shall include semi-trailer.

G. Completed Operations Hazard. Includes bodily injury and property damage arising out of operations, but only if the bodily injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the City. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

1. when all operations to be performed by or on behalf of the City under the contract have been completed,
2. when all operations to be performed by or on behalf of the City at the site of the operations have been completed, or
3. when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or sub-contractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise completed, shall be deemed completed.

The Completed Operations Hazard does not include bodily injury or property damage arising out of:

1. operations in connection with the transportation of property, unless the bodily injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof.
2. the existence of tools, uninstalled equipment or abandoned or unused materials.